

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

OLEN D. WOMBLE, III,

Plaintiff,

CASE NO. 1:12-CV-814

v.

HON. ROBERT J. JONKER

MARY BERGUIS, *et al.*,

Defendants.

**ORDER APPROVING AND ADOPTING
REPORT AND RECOMMENDATION**

The Court has reviewed Magistrate Judge Brenneman's Report and Recommendation in this matter (docket # 50) and Plaintiff Womble's Objections to the Report and Recommendation (docket # 51). Under the Federal Rules of Civil Procedure, where, as here, a party has objected to portions of a Report and Recommendation, "[t]he district judge . . . has a duty to reject the magistrate judge's recommendation unless, on de novo reconsideration, he or she finds it justified." 12 WRIGHT, MILLER, & MARCUS, FEDERAL PRACTICE AND PROCEDURE § 3070.2, at 381 (2d ed. 1997). Specifically, the Rules provide that:

The district judge to whom the case is assigned shall make a de novo determination upon the record, or after additional evidence, of any portion of the magistrate judge's disposition to which specific written objection has been made in accordance with this rule. The district judge may accept, reject, or modify the recommended decision, receive further evidence, or recommit the matter to the magistrate judge with instructions.

FED R. CIV. P. 72(b). De novo review in these circumstances requires at least a review of the evidence before the Magistrate Judge. *Hill v. Duriron Co.*, 656 F.2d 1208, 1215 (6th Cir. 1981).

The Court has reviewed de novo the claims and evidence presented to the Magistrate Judge; the Report and Recommendation itself; and Plaintiff's objections. After its review, the Court finds that Magistrate Judge Brenneman's Report and Recommendation is factually sound and legally correct.

The Magistrate Judge recommends granting summary judgment in favor of Defendants Gargus and Bradford. In his Objections, Mr. Womble primarily reiterates and expands arguments made in his motion papers. The Report and Recommendation already carefully, thoroughly, and accurately addresses these arguments. Nothing in Plaintiff's Objections changes the fundamental analysis. The Court agrees with the Magistrate Judge's conclusion that Defendants are entitled to the relief they seek, for the very reasons the Report and Recommendation delineates.

ACCORDINGLY, IT IS ORDERED that the Report and Recommendation of the Magistrate Judge (docket # 50) is approved and adopted as the opinion of the Court.

IT IS FURTHER ORDERED that Defendants Gargus and Bradford's second Motion for Summary Judgment (docket # 44) is **GRANTED**.

IT IS FURTHER ORDERED that for the same reasons that the Court dismisses the action, the Court discerns no good-faith basis for an appeal within the meaning of 28 U.S.C. § 1915(a)(3). *See McGore v. Wrigglesworth*, 114 F.3d 601, 611 (6th Cir. 1997).

This case is **DISMISSED**.

Dated: October 30, 2014

/s/ Robert J. Jonker
ROBERT J. JONKER
UNITED STATES DISTRICT JUDGE